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No. 35, Original

In the Supreme Court of the United States

OCTOBER TERM, 1995

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF MAINE, ET AL.
(MASSACHUSETTS BOUNDARY CASE)

ON EXCEPTION TO THE REPORT OF THE SPECIAL MASTER

JOINT MOTION FOR ENTRY OF A SUPPLEMENTAL DECREE, MEMORANDUM IN SUPPORT OF THE JOINT MOTION, AND PROPOSED SUPPLEMENTAL DECREE

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JOINT MOTION FOR ENTRY OF A SUPPLEMENTAL DECREE

The United States of America and the Commonwealth of Massachusetts jointly move that this Court enter a supplemental decree in the form and manner of the attached proposed decree. The basis for this motion is explained in the memorandum that follows.

Respectfully submitted.

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JANUARY 1996

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MEMORANDUM IN SUPPORT OF THE JOINT MOTION FOR A SUPPLEMENTAL DECREE

This joint motion arises from litigation between the United States and the Commonwealth of Massachusetts over whether Vineyard Sound and Nantucket Sound are part of the "internal waters" of Massachusetts. This Court has decided that Vineyard Sound qualifies as internal waters, but Nantucket Sound does not. *United States* v. *Maine*, 475 U.S. 89 (1986). The United States and Massachusetts have prepared the proposed decree in conformity with the Court's decision.

1. In 1969, the United States brought suit against 13 States to resolve disputes respecting the scope of the federal sovereign interest in the seabed and

submerged lands underlying the Atlantic Ocean. See *United States* v. *Maine*, 395 U.S. 955 (granting the United States leave to file complaint). The Court appointed a Special Master, 398 U.S. 947 (1970), who submitted a report to the Court, 419 U.S. 814 (1974). The States filed exceptions to the Special Master's report. The Court overruled those exceptions, concluding that the United States has sovereign rights over the seabed and subsoil lying more than three geographic miles seaward from the ordinary low-water mark and from the outer limits of inland coastal waters. 420 U.S. 515 (1975). The Court entered a decree in accordance with that ruling. 423 U.S. 1 (1975).

2. The Court retained jurisdiction to resolve remaining issues respecting the location of the coastline of the States and the seaward boundary between the seabed lands of the States and those of the United States. *United States* v. *Maine*, 421 U.S. 958 (1975). In 1976, the United States filed a motion for supplementary proceedings to resolve issues respecting portions of the coastlines of Rhode Island and Massachusetts. The Court appointed a new Special Master, 433 U.S. 917 (1977), who severed the Massachusetts dispute from the Rhode Island dispute and allowed New York to intervene in the latter proceeding. See *United States* v. *Maine (Rhode Island and New York Boundary Case)*, 469 U.S. 504, 508 (1985).

In the case of the dispute involving Rhode Island and New York, the Special Master submitted a report addressing the status of Block Island Sound and a portion of Long Island Sound. *United States* v. *Maine*, 465 U.S. 1018 (1984). The United States, Rhode Island, and New York all filed exceptions to the

Special Master's report. The Court overruled those objections, concluding that certain portions of the waters in dispute are "juridical bays" and therefore inland waters of the States. *United States* v. *Maine (Rhode Island and New York Boundary Case)*, 469 U.S. 504 (1985). The Court entered a supplemental decree in accordance with its ruling. 471 U.S. 375 (1985).

In the case of the Massachusetts dispute, the Special Master submitted a report addressing the location of portions of that Commonwealth's coastline in the area between Eastern Point, on Cape Ann, and Race Point, on Cape Cod, and between Gooseberry Neck and Cuttyhunk Island. The parties filed no exceptions to that report, and the Court accordingly entered a supplemental decree adopting the Special Master's determinations. *United States* v. *Maine (Massachusetts Boundary Case)*, 452 U.S. 429 (1981). The Master separately addressed the question whether Vineyard Sound and Nantucket Sound are inland waters of the Commonwealth. The Master submitted a report recommending that Vineyard Sound constitutes inland waters, but Nantucket Sound does not. *United States* v. *Maine*, 472 U.S. 1015 (1985). Massachusetts filed an exception respecting Nantucket Sound, but the Court overruled that exception. 475 U.S. 89 (1986).

3. In its decision respecting Nantucket Sound, the Court directed the parties "to prepare and submit a decree conforming to the recommendations of the Special Master." *United States* v. *Maine*, 475 U.S. at 105. The parties began work in preparing the decree, but as a result of changes in the respective governments' personnel and the press of other government business, the undertaking did not progress for a

considerable period of time. The United States and the Commonwealth of Massachusetts have now resumed and completed that undertaking. The proposed decree describes the location of the Massachusetts coastline in the vicinity of Vineyard and Nantucket Sounds in accordance with this Court's February 25, 1986, decision, the Special Master's report, and agreements reached between the parties.

Respectfully submitted.

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PROPOSED SUPPLEMENTAL DECREE

The Court having, by its decision of February 25, 1986, adopted the recommendation of its Special Master that Vineyard Sound constitutes historic inland waters and overruled the exception of Massachusetts to the Report of its Special Master herein insofar as it challenged the Master's determination that the whole of Nantucket Sound does not constitute historic or ancient inland waters, and having, to this extent, adopted the Master's recommendations and confirmed his Report:

IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. For the purposes of the Court's Decree herein dated October 6, 1975, 423 U.S. 1 (affirming the title of

the United States to the seabed more than three geographic miles seaward of the coastline, and of the States to the seabed within the three geographic mile zone), the coastline of the Commonwealth of Massachusetts shall be determined on the basis that the whole of Vineyard Sound constitutes state inland waters and Nantucket Sound (with the exception of interior indentations which are described in paragraphs 2(c), (d) and (e) below) is made up of territorial seas and high seas.

2. For purposes of said Decree of October 6, 1975, the coastline of Massachusetts includes the following straight lines:

(a) A line from a point on Gay Head on Martha's Vineyard (approximately 41°21'10"N, 70°50'07"W) to the southwestern point of Cuttyhunk Island (approximately 41°24'39"N, 70°56'34"W);

(b) A line from a point on East Chop (approximately 41°28'15"N, 70°34'05"W) to a point on Cape Cod (approximately 41°33'10"N, 70°29'30"W);

(c) A line from a point southeast of East Chop (approximately 41°27'30"N, 70° 33'18"W) to a point west of Cape Pogue (approximately 41°25'06"N, 70°27'56"W) on the island of Martha's Vineyard;

(d) A line from a point on Point Gammon on Cape Cod (approximately 41°36'36"N, 70°15'40"W) to the southwestern-most point of Monomoy Island (approximately 41°33'02"N, 70°00'59"W); and

(e) A line from a point on the west coast of Great Island (approximately 41°37'08"N, 70°16'15"W) to a point on Hyannis Point on Cape Cod (approximately 41°37'27"N, 70°17'34"W).

3. The Court retains jurisdiction to entertain such further proceedings, enter such orders, and issue such writs as from time to time may be deemed necessary or advisable to effectuate and supplement the decree and the rights of the respective parties.